In the High Court of Uttaranchal at Nainital.

Writ Petition No. 194/2004(M/S)

District Basis Education Officer
Haridwar and another .. Petitioners.

Vs.

Panchayati Akhada Bada Udaseen
through Mahant Rajendra Das
Chella Mahant Gopal Das Mukami
Mahant Evam Prabandhak society aforesaid,
R/o Rajghat Kankhal,

District Haridwar .. Respondent.

Dated: 27.09.2004.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have prayed for a writ of certiorari praying for quashing the order dated 16-7-203, passed by the Additional District Judge/ F.T.C. –I, Haridwar in rent control no. 12 of 1999.

Briefly stated the facts of the case are that an application under Section 21(8) of U.P. Act No.13 of 1972 for enhancement of the rent was filed by the respondent. The aforesaid proceedings were contested by the petitioner on the ground that the provisions of Act No.13 of 1972 are not applicable to the premises in suit. The Prescribed Authority vide his order dated 30-1-1999 has held that the provisions of Act No.13 of 1972 are not applicable to the premises in suit, hence the proceedings were dropped. An appeal was preferred by the respondent being appeal no. 12 of 1999. The appellate court vide its order dated 16.7.2003 has allowed the appeal and sent the matter back to the Prescribed Authority for deciding it on merits.

After hearing the counsel for the parties it will appear that the proceedings under Section 21(8) of the Act No.13 of 1972 were instituted for enhancement of the rent as Section 21 (1)(a) is not available to the landlord. Section 21(8) of U.P. Act No. 13 of 1972 provides as under:-

> "(8) Nothing in clause (a) sub section (a1) shall apply to a building let out to the State Government or to a local

authority or to a public sector corporation or to a recognized educational institution unless the Prescribed Authority is satisfied that the landlord is a person to who clause (ii) or clause (iv) of the Explanation to sub-section (1) is applicable:

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhenaced shall be payable form the commencement of the month of tenancy following the date of the application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enchancement."

In the present proceedings the landlord has Claimed the enhancement to the extent of Rs. 8,391/. District Basis Education Office, Haridwar being a public building there is no occasion to file the application under Section 21(1)(a) of the Act for the release of the accommodation and as such the appellate court has rightly allowed the appeal and has sent back the case to the Prescribed Authority for deciding the case on merits. It is really surprising that the application filed in the year 1989 is still pending and has not yet been disposed of on merits whereas in point of fact Section 21(8) of the Act provides that the application can be filed after the interval of five years. The findings of the Prescribed Authority that it is a public charitable trust is wholly unfounded in as much as the premises in dispute being a public building, the provisions of the sub-section (8) of Sec tion 21 being applicable, the appellate authority has rightly set aside the findings of the Prescribed Authority by allowing the appeal and sending back the matter to the Prescribed Authority for deciding the application on merits.

Section 2(bb) provides only exemption in respect of public charitable or public religious institutions. There is nothing on record which provides that he present premises in a public charitable or public religious institution and as such the District Basis Education Office being educational institution, there being no application of Section 21 (1)(a) of Act No.13 of 1972, I find no infirmity in the findings of the appellate authority.

In Radha Kishan vs. The State of U.P. and others; Allahabad Rent Cases, 1981 it has been held as under:-

"In Pretty v. Solly, quoted in (Craise on Statue Law at p. 206, 6th Edition)Romilly, M. R. mentioned the rul thus: The rule is that whenever there is a particular enactment and a general enactment in the same statue and the latter, taken in its most comprehe nsive sense, would overrule the former, the particular enactment must be taken to affect only the other parts of the statue to which it may properly apply.

The rule has been applied as between different provisions of the same statue in numerous cases some of which only Crease, United States v. Chase and Carrol v. Greenwich Ins. CO.

For giving harmonous construction to the two provisions of the Act we have to see the purpose and intent of the Act as it stood originally and effect of the amendment on it. As the Act stood prior to its amendment by Act No. 28 of 1976, the public buildings were not exempt from the operation of the Act and the provisions of Section 21 could be invoked for evicting Central or State Government or other authorities mentioned in the definition of the public building as any other tenant. By enactment of sub-section (8) of Section 21, the right of the landlord to evict the State Government etc. was taken away The relief was granted to the landlord by way of

enhancement of rent. Two provisions were added to that sub-section. The first was that the landlord was entitled to enhancement of monthly rent for the building to a sum equivalent to 1/12th of 10% of the market value of the building and under the second proviso that such enhancement could be claimed after expiry of every five years. This makes it clear that the Leislature was aware of the fact that the buildings which were in the tenancy of the Government or other authorities form before the enactment of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) act, 1972, were carrying on rent which was fixed much earlier. It was also aware of the fact that the value of the buildings has gone up and further that it might go up with market passage of time in future. The aforesaid provisions were, therefore, inserted to ensure the landlord a fair return form his property. It is true that under Section 2 (1) it is mentioned that "nothing in this Act shall apply to any public building."

But clause (8) of Section 21 does not apply to every public building. It applies to only some of them. Buildings in the tenancy of the Central Government have not been brought within the ambit of sub-section (8) of Section 21 of the Act. It may be noted that the two provisions have been added to the Act by the same Amending Act No. 28 of 1976, Section 26 of the Amending Act relate to the transitory provisions. Under sub-section (2)(4) of Section26 of the aforesaid Act the authorities concerned were given opportunity to save the tenancy and to avoid effect of the eviction orders already passed under sub-section (1)(a) of Section 21 by agreeing to pay rent at the same rate as provided in sub-section (8) was an exception to the general exemption of "public building" under Section 2(1) (a) of the Act and was not meaningless.

Similar question arose in another case of Commissioner of Income Tax Madhya Pradesh v. Nanlal Bhandari &

Sons (Pvt.) Ltd. It related to interpretation of Section 10(2) of the Indian Income Tax Act, 1922 relating to exemptions in assessment and the charging after sale of properties so exempted. It was held that " from the language of (vii) and the second proviso to it that whereas the clause deals with the grant of an allowance, the proviso is really a charging provision in computing the profits of business under Section 10. Thus there is no difficulty in bolding that the proviso to sub-section (8) of Section 21 of the Act can be a subjective provision under whichs the landlord could claim enhancement of the rent in respect of the building mentioned in the aforesaid sub-section.

It is not disputed that the disputed building is in the tenancy of the State Government and entitled for the ememption under Section 2(1)(a) of the Act. Sub-section (8) of Section 21 is squarely applicable in the instant case. What is required by the first proviso of that section is that the building should be such building that is in the tenancy of the State Government….As the two provisions have been incorporated in the Act by same Amending Act it can not be said that the Legislature did not intend to confer rights on the parties in accordance with sub-section (8) and by proviso the landlord was granted relief in the shape of enhancement of rent according to the market value of the property. I accordingly hold that sub-section (8) of Section 21 was not redundant and an application under the proviso to sub-section (8) of Section 21 of the Act is maintainable in case of buildings let out to State Government or other authorities covered by that sub-section."

I find no merit in the writ petition and the same is dismissed. However the Prescribed Authority is directed to decide the case itself within a period of four months.

Date:- 27.09.2004.
ISB **(Rajesh Tandon, J.)**